

What canon lawyers are and aren't

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MOST people think of canon lawyers as bespectacled, gray-haired monsignors who sit in dark-paneled rooms and quote Latin verses from authors dead for a hundred years. It may have been like that once, but today canon lawyers cut a different figure. I want to explain what canon lawyers are, what canon law is, and how to use (or not use) a canon lawyer.

Canon law is the legal system of the Catholic Church and is the oldest functioning legal system in the Western world. The word canon comes from the Greek *kanon*, meaning a rule or measure. In the early centuries of Christianity, canon law consisted mostly of rules developed in synods and councils. Like other legal systems, canon law developed over the centuries, adopting new techniques and priorities while discarding outdated ones. The rediscovery of Roman civil law in the eleventh century greatly aided the development of canon law as a discipline distinct from moral theology.

Following centuries of increasing complexity in canon law, Pope Pius X decided in

1904 that canon law, which was then scattered throughout thousands of papal and diocesan decrees, decisions, and commentaries, should be collected and simplified into a single authoritative code. By 1917, the Church's first Code of Canon Law was ready. The Pio-Benedictine, or 1917, Code was widely recognized as a major legal and pastoral accomplishment. Its 2,414 canons were in force through the Second Vatican Council (1962-1965), by which time, though, it was clear that the 1917 Code was in need of reform.

Beginning in 1966, and utilizing canonical and theological experts from around the world, this major revision process was completed by late 1982. In January 1983 Pope John Paul II promulgated the 1,752 canons of the new Code of Canon Law, which took effect the following November. This revised Code, known commonly as the 1983 Code, will likely remain the Church's basic canon law for many decades to come. The only official text of the 1983 Code is in Latin, but unofficial translations are readily available.

Canon law, like every legal system, is concerned primarily with protecting the smooth order of the society which it serves — in this case, the society known as the Catholic Church. Canon law touches, to one degree or another, practically every aspect of Church life. Con-

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trary perhaps to popular impression, the operation of canon law is almost always limited to matters which concern the external conduct of Church members. This is an important point, so let's consider it from another angle.

The Catholic Church, unlike civil society or the state, is charged by Christ the Lord to guide men and women to their supernatural end. This task necessarily implies a certain ecclesiastical authority over what some might loosely term "internal" or "personal" matters in the lives of Catholics, an authority which would, of course, be entirely inappropriate in the hands of civil governments. Canon law operates in service to the Church which has supernatural responsibilities; canon law itself, with some exceptions, continues to function primarily as an objective regulator of that ecclesiastical society. It is not a judge of the interior state of the souls of Catholics.

At various times, canon law has been held in high esteem or low repute both in the Church and in civil society. Today canon law holds a middle position between these two extremes, although waves of "antinomianism" (a rejection of any tolerance for law in the Church) and "legalism" (an excessive emphasis on purely legal demands in the Christian life) continue to cloud a proper understanding of the place of canon law in Catholic life.

A CANON lawyer has significant knowledge about the legal system of the Catholic Church. Canon lawyers spend two or three post-college academic years studying canon law, earning a licentiate (J.C.L.) degree. Some continue their education and earn a doctoral degree (J.C.D.). There are only two canon law schools in North America, the Catholic University of America in Washington, D.C., and St. Paul's University in Ottawa, Canada. Most North American canonists attend one of these, although some study abroad, often in Rome. In North America, four out of five canon lawyers are priests, but in recent years the number of religious men and women as well as lay men and women in canon law has been increasing.

Considerable theological knowledge is a prerequisite to formal canonical education. Many canon lawyers have advanced degrees in theology. Still others have advanced degrees in

related fields, such as Church history or civil law.

This point bears reemphasizing. While every priest is required to study some basic canon law in the seminary, recently the time spent studying canon law during ministerial training has been reduced considerably. One's status as a priest (or bishop, for that matter) does not necessarily mean that one is a qualified canon lawyer. In this article, the term "canon lawyer" refers to those who have at least a licentiate degree in canon law.

CANON law (and canon lawyers) do not determine Church teaching or principles of morality. Rather, canon law receives Church teaching from the magisterium and adduces rules, or canons, which protect that teaching in appropriate ways. Developing legal norms for the support of Church teaching is no easy matter. By analogy, consider how difficult it is for civil governments to devise acceptable legal expressions for the basic philosophical values of a nation.

Disputes over what form a law should take or what interpretation a law should receive can and do arise in the Church. Rather than being a cause for undue alarm, these debates are the stuff of which genuine reforms are made. The doctrinal and moral beliefs of the Church must always be the foundation of her canon law: Belief unexpressed in law would be powerless, but laws not based on belief would be meaningless.

Even those in Church leadership — parish pastors, diocesan bishops, members of the Roman Curia — are bound by canon law. For these persons, high office and good intention are not sufficient bases for taking a given action. Their actions must be in conformity with the requirements of canon law. Under certain circumstances, the failure of such leaders to follow the requirements of canon law can render their actions illicit or invalid. Gross violations of canon law, if proven, can leave Church leaders liable to making restitution to those who may have been harmed by their actions — and they can become subject themselves to ecclesiastical sanctions.

Neither the Code nor the educational regime of canon lawyers authorizes a canonist, as a canonist, to pronounce on matters of

Church doctrine. Canon lawyers are not theologians, moralists, psychologists, pastoral planners. They are lawyers. This is an important point, all the more so because canonists are sometimes apt to forget it themselves.

Lawyers, civil and canon, are trained to advise people about how to exercise their rights and to fulfill their obligations in accord with law. Ideally, lawyers help people avoid legal mistakes which could prevent them from accomplishing their goals. The job of a canon lawyer is to see that the carefully devised rules of Church order are properly understood and applied.

SOMETIMES people find themselves in conflict with each other or with society. This happens in the Church as well in the state. In such cases, canon lawyers can advise (note: advise, not decide for) the parties about their respective rights and duties in the hope of avoiding more serious difficulties. Indeed, canon law demands that parties try to settle their differences before resorting to formal canonical processes. But if one is unable to effect a resolution, or if one is the object of disciplinary action in the Church, he can and should make use of a canon lawyer to represent his interests in light of the ecclesial common good.

When seeking canonical advice, remember that the opinion of a canonist is a professional opinion arrived at, presumably, after significant education and serious reflection. That is not the same thing as saying that the opinion a canonist is always going to be correct or effective. All lawyers make mistakes, and even good lawyers can fail to have their arguments accepted on behalf of a client. Although it is true that the requirements of canon law reach much higher in the Church than is commonly perceived and that losing an argument on the first or second try does not mean that one will lose at the highest levels, still, for all that, final disciplinary authority in the Church rests with the Pope and the college of bishops. Their decisions are binding.

For suggestions on how to use canon lawyers let's divide Catholics into three groups: those who are in authority (such as diocesan bishops and parish pastors); those who directly assist Church leaders (such as diocesan or



parish staff, or members of councils), and the laity of the Church, especially parishioners.

Regarding bishops and pastors, canon law does not grant or restrict their authority. Instead, canon law defines their authority in accord with the nature of the Church as mandated by Christ. The opinion of a canonist on a specific question, then, is the opinion of one trained to recognize whether a given action is in accord with the legal expressions of Christ's will for his Church.

As a matter of routine, ecclesiastical documents and policies should be reviewed by a canonist to determine whether the proposed accords with the requirements of ecclesiastical law. It is surprising how often this basic process, which is so common among civil counterparts such as businesses or corporations, is omitted in Church circles. Where it is not yet practiced, it might take a little getting used to.

The approval of a proposal by a canonist does not necessarily mean that it is in all other respects a good idea. Likewise, disapproval by a canonist does not necessarily mean that it is unsound. It only means that the proposal must be amended in order to bring it into full accord with the demands of Church law. Common sense suggests it is far easier to correct actions while they are still in draft form.

Regarding those who directly assist Church leaders, such as members of diocesan staffs or parish councils, canon lawyers provide a number of services. Perhaps most importantly, canon lawyers can explain just how one assists those in authority.

For example, how many people who serve on such bodies really understand the difference between the "deliberative vote of the parish finance council" and the "consultative vote of the parish pastoral council"? While members of both councils provide important assistance to Church leaders, they operate in significantly different canonical ways and with significantly different canonical consequences. Canon lawyers can explain and advise on such differences, thus freeing up members' time and energy for the substantive matters under their charge.

That brings us, then, to how the laity at large can use a canon lawyer. Of course, most members of the Church will pass their earthly days

without even meeting, let alone needing, a canon lawyer. Still there are two main ways in which canonists can assist the laity.

Lay persons seeking an ecclesiastical hearing on a point of importance to them will improve their chances for such a hearing by phrasing their request in canonically sound terms from the start, rather than having to correct, or retract, their petitions later. This is especially true if their request (or suggestion, disagreement, or dispute) is, or might later be, addressed to the diocesan bishop or to the Vatican. The point here is not to paralyze the laity for fear of making canonical mistakes in dealing with Church leaders, but rather to alert them that canon law is going to affect the outcome of many of their initiatives.

THIS means the first way canonists can assist the laity is in education. As long as it is kept in mind that canon law represents in "merely" legal terms basic notions which are actually derived from ecclesiology, sacramental theology, and so on, canonical presentations on such topics can be enlightening. Changes in the Church (both actual and purported) over the last generation have sparked many questions and much confusion among the laity. Canon law can help explain what those changes were (or were not), which in turn can help lay people live their lives as members of God's holy people with more understanding and effectiveness.

Second, situations arise in which lay people find themselves dealing directly with Church government. An example is the "marriage annulment"—or, more precisely, a declaration of matrimonial nullity. But issues or disputes can arise in almost any area of Church life, notably in regard to educational policies, admission to sacraments, use of Church property, and liturgical discipline. In each of these areas, depending on specific facts and circumstances, there is the possibility that canonical rights and obligations are involved, and consultation with a canonist should be considered.

Keep in mind that canon lawyers are not moral police or oracles of spiritual wisdom, and they are not perfectionists who enjoy clogging the gears of Church government. Their sole task is to protect every Catholic's rights and to explain every Catholic's duties. □